



PUBLIC NOTICE

Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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DA 04-3790

Released: November 30, 2004

DOMESTIC SECTION 214 APPLICATION FILED FOR TRANSFER OF CONTROL OF FIRST COMMUNICATIONS LLC FROM FIRSTENERGY TO MCKINLEY COMMUNICATIONS, LLC

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 04-422

Comments Due: December 14, 2004

Reply Comments Due: December 21, 2004

On November 23, 2004, FirstEnergy Corp. ("FirstEnergy" or "Transferor") and McKinley Communications, LLC ("McKinley" or "Transferee") collectively referred to as the ("Parties") or ("Applicants"), pursuant to sections 63.03 and 63.04 of the Commission's rules,¹ filed an application requesting authority to transfer control of First Communications LLC ("First") from FirstEnergy to McKinley.²

Applicants assert that this transaction is entitled to presumptive streamlined treatment pursuant to section 63.03(b)(1)(ii) of the Commission's rules because neither Transferee nor any of its affiliates (as that term is defined in section 3(1) of the Act) is a telecommunications provider.³

First is an Ohio limited liability company based in Akron, Ohio that provides local, private line and long distance services on a common carrier basis to both business and residential customers in several states in the U.S. Currently, First provides its communications services, including conference calling packages, calling cards, prepaid calling cards, and Internet access to approximately 70,000 customers located primarily in Florida, Ohio, Indiana and Michigan.

¹ 47 C.F.R. §§ 63.03, 63.04; *see* 47 U.S.C. § 214.

² Applicants are also filing applications for transfer of control associated with authorization for international services as First also holds Section 214 authority to provide international services on a resale basis. Any action on this domestic 214 application is without prejudice to Commission action on other related, pending applications.

³ 47 C.F.R. § 63.03(b)(1)(ii).

First's telecommunications services are provided primarily on a resale basis using facilities and switches that are owned and operated by other telecommunications carriers. FirstEnergy, a registered Ohio public utility holding company holds a 65 percent ownership interest in First.⁴ The remaining 35 percent ownership interest is held by Boich Investment Group, Ltd. ("Boich") of Columbus, Ohio.⁵

McKinley is an Ohio limited liability company based in Canton, Ohio, whose principal business is investments. McKinley, in turn, is controlled by Marbel Investments, LLC ("Marbel"), an investment company having an 80 percent ownership interest in McKinley. Marbel is owned in equal shares by four (4) individual investors, all U.S. citizens, – Marsh Belden, Timothy Belden, Susan Belden, and Katherine Belden (the "Beldens"). Neither McKinley nor any of its affiliates currently provide any telecommunications services on a common carrier basis.

FirstEnergy and McKinley have reached an agreement in principle whereby FirstEnergy will sell to McKinley a 51 percent membership interest in First. The purchase price for the membership interest is \$18,000,000, subject to certain subsequent adjustments. The proposed transaction is contingent on receipt of necessary regulatory approvals, among other things. After closing, McKinley will hold a 51 percent ownership interest in First, while FirstEnergy will retain a 14 percent ownership interest. The 35 percent ownership interest of Boich will remain unchanged.

Applicants assert that the proposed Transaction will serve the public interest by enabling McKinley to bring additional capital to First, strengthening it to better ensure that it remains a viable long-term competitor in the telecommunications marketplace. The Applicants state that maintaining a controlling interest in First is no longer consistent with FirstEnergy's goals and objectives, and the proposed transaction will permit FirstEnergy to decrease its interest in First in an orderly fashion. In addition, McKinley will supplement First's current management, the majority of whom will be retained post-closing. Applicants state that because this is an equity transaction as opposed to an asset sale, no change of carrier for First's customers will occur. Thus, immediately following consummation of the proposed transaction, First will continue to provide high-quality communications services to its customers without interruption and without immediate changes in rates, terms or conditions. Finally, since neither McKinley nor any of its affiliates is presently a participant in the telecommunications market, no competitors will be eliminated as a result of the proposed transaction.

GENERAL INFORMATION

The transfer of control identified herein has been found, upon initial review, to be

⁴ No shareholder of FirstEnergy holds a 10 percent or greater ownership interest in FirstEnergy.

⁵ Boich is 100% owned by Wayne Boich, Sr., a U.S. citizen whose principal business is coal.

acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer of control application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Interested parties may file **comments on or before December 14, 2004** and **reply comments on or before December 21, 2004.**⁶ Unless otherwise notified by the Commission, Applicants are permitted to transfer assets on the 31st day after the date of this notice.⁷ Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send e-mail to ecfs@fcc.gov, and should include the following words in the subject line "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

In addition, one copy of each pleading must be sent to each of the following:

(1) The Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW,

⁶ See 47 C.F.R. § 63.03(a).

⁷ Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

Room CY-B402, Washington, DC 20554, www.bcpiweb.com; phone: (202) 488-5300 fax: (202) 488-5563;

- (2) Tracey Wilson-Parker Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C212, Washington, D.C. 20554; e-mail: tracey.wilson-parker@fcc.gov;
- (3) Terri B. Natoli, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C234, Washington, D.C. 20554; e-mail: terri.natoli@fcc.gov;
- (4) Susan O'Connell, Policy Division, International Bureau, 445 12th Street, S.W., Room 7-B544, Washington, D.C. 20554; email: susan.o'connell@fcc.gov; and
- (5) James Bird, Office of General Counsel, 445 12th Street, S.W., Room 8-C824, Washington, D.C. 20554; e-mail: james.bird@fcc.gov.

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, telephone: (202) 488-5300, fax: (202) 488-5563, or via e-mail www.bcpiweb.com.

For further information, please contact Tracey Wilson-Parker, at (202) 418-1394, or Terri B. Natoli at (202) 418-1574.

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